IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3151 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI DOONGERSHIBHAI LAKHTARIYA

Versus

INDUBHAI DAMODARDAS SHAH

Appearance:

MR HARSHAD J SHAH for Petitioner No. 1-3

MR BB NAIK for Respondent No. 1

MR CB DASTOOR for Respondent No. 1

MR AJ DESAI, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/05/2002

ORAL JUDGEMENT

1. Learned advocates for the parties are present.

The contesting parties had submitted a compromise application yesterday. However, the offences narrated in the complaint before the trial Court are not compoundable and, therefore, no further order was passed on that application.

2. Today, learned advocates for contesting parties who were present before the Court have submitted that the complaint has been filed in respect of offences punishable under Sections 196, 197, 198, 199, 200, 205 read with Section 114 of Indian Penal Code. They agree that the offences punishable under Sections 196, 199, 200 and 205 are all covered by Section 195 of the Criminal Procedure Code and in view of the provisions made in Section 195 of the said Code, it was not legally be permissible for the Court concerned to register a complaint in absence of a complainant in writing of the Court concerned or some other Courts to which the said Court is subordinate and, therefore, they agree that the trial Court could not proceed further with the complaint in respect of the said offences, in view of a technical bar of Section 195 of the said Code. Therefore, they have requested that the complaint is required to be quashed with respect to the said offences on the said count only.

3. They also agree that before the complaint could be filed by the Court concerned, it was necessary for the said Court to have subjective satisfaction with respect to the provisions made in Section 340 of the said Code and that there is no such satisfaction on record and the procedure laid down therein has not been followed and, therefore, the complaint is not maintainable on that ground also. With respect to the offences punishable under Sections 197 and 198 of the Indian Penal Code, again it has been submitted by the learned advocates for the parties that having regard to the complaint, no prima facie case is made out and the Court was not required to proceed further in respect of the said offences. In above view of the matter, when the complaint cannot proceed with in respect to some offences on account of technical bar of Section 195 of the said Code and when remaining offences are not made out of, it would be proper for this Court to exercise inherent jurisdiction vested under Section 482 of the said Code for quashing the criminal proceeding in question.

4. It has been stated at the Bar that the original accused No.2 in the main matter has passed away during the pendency of this application and other accused Nos.5 and 6 have been discharged by the trial Court. These

facts are required to be considered while passing further orders in the matter.

5. In view of the above position, no further orders are required to be passed on the compromise application submitted by the parties.

6. For the foregoing reasons, this application is allowed. Criminal Complaint No.1125 of 1994 pending before the learned Judicial Magistrate First Class at Gandhinagar is ordered to be quashed on the aforesaid technical aspects of the case as argued by learned advocates for the contesting parties. Since the complaint is ordered to be quashed, the passport of the petitioner Falgun C. Patel deposited before the learned Magistrate shall be returned to him by the said Court forthwith and the amount of Rs.5,000-00 deposited by the petitioner shall be refunded to him. Rule is made absolute to the above extent. Direct service is permitted.

[D. P. BUCH, J.]

vijay